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UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DAVID PORTER, SCOTT SUTTER
and BETHANY WHALEY,

Plaintiffs,

V

CITY OF FLINT and DONALD WILLIAMSON,
individually,

Defendants.

CIVIL ACTION NO. 07-14507

HON.
MAG.

Cohn
Majors

LAW OFFICE OF GLEN N. LENHOFF
BY: GLEN N. LENHOFF (P32610)
MICHAEL E. FREIFELD (P48198)
Attorney for Plaintiffs
328 South Saginaw Street
8th Floor, North Building
Flint, Michigan 48502
(810)235-5660

FILED

2007 OCT 23 A 10:12

U.S. DIST. COURT CLERK
EAST DIST. MICH
FLINT

COMPLAINT AND JURY DEMAND

There is no other pending or resolved civil action between the parties arising out of the same transaction or occurrence as alleged in this Complaint.

NOW COME Plaintiffs, David Porter, Scott Sutter and Bethany Whaley, by and through their attorney, the Law Office of Glen N. Lenhoff, and hereby complain of Defendants, City of Flint and Donald Williamson, as follows.

PARTIES AND JURISDICTION

1. Plaintiffs, David Porter, Scott Sutter and Bethany Whaley (hereinafter "Plaintiffs"), are residents of the County of Genesee, State of Michigan. Furthermore, all three were Captains in the Flint Police Department at all times pertinent to this lawsuit.

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2. At all pertinent times to this lawsuit, Defendant City of Flint (hereinafter "Defendant Flint") was a municipal corporation located in the State of Michigan. Defendant Flint is located in the Eastern Judicial District of Michigan.

3. Defendant Donald Williamson (hereinafter "Defendant Williamson") is a resident of the County of Genesee, within the Eastern Judicial District of Michigan.

4. Defendant Williamson was the Mayor of Defendant Flint at all times pertinent to this lawsuit. Defendant Williamson is being sued in this case in his individual capacity.

5. In light of the foregoing, venue is proper in the United States District Court for the Eastern District of Michigan under 28 USC §1392(c).

6. This Court has subject matter jurisdiction over this case based on federal question jurisdiction, which is codified in 28 USC §1331 as well as 42 USC §1343, because this is a 42 USC §1983 case.

GENERAL ALLEGATIONS

7. Plaintiffs hold the rank of Captain with Defendant Flint's police department.

8. Plaintiffs have performed their duties with Defendant Flint's police department in a diligent and effective manner.

9. Plaintiffs are all Caucasian.

10. On or about October 26, 2006, Defendant Williamson, City of Flint Police Chief Gary Hagler, and leaders of the Flint NAACP, the African American Police League and the Flint Police Officers Association met to discuss on-going

labor issues within the Defendant Flint's police department.

11. As a result of that meeting, a memorandum of understanding was agreed to between the parties.

12. As part of the memorandum of understanding, Defendant Williamson agreed to change the promotional process within Defendant Flint's police department to promote cultural diversity.

13. On November 9, 2006, Defendant Williamson and others announced the terms and conditions of the memorandum of understanding at a news conference at the Flint NAACP offices.

14. On November 9, 2006, during an interview with ABC 12 news reporter Dawn Jones, Terry Neeley (President of the African American Police League) stated that the discussion with Defendant Williamson concerning the memorandum of agreement revolved around increasing diversity on Defendant Flint's police department.

15. Specifically, Neeley stated that the discussions involved hiring more African-Americans into the police department, promoting more African-Americans into the higher command structure of Defendant Flint's police department, and to change the testing process for promotions.

16. On December 1, 2006, Defendant Williamson announced the creation of the Citizens Service Bureau. As a result, five new positions were created in Defendant Flint's police department: one "Major" and four "Inspector" positions were created.

17. According to the job descriptions released by Defendant Flint, the Inspector positions on the Citizens Service Bureau are to supervise some police and civilian personnel. The minimum entrance requirements for these positions are: (1) knowledge of modern police administrative methods, organization and procedure; (2) knowledge of police training and principles and methods; (3) ability to interpret departmental procedures, rules and regulations, and policies; and (4) ability to plan, assign, supervise and review varied police work.

18. According to the job descriptions released by Defendant Flint, the Major position on the Citizens Service Bureau is to supervise the Inspectors. The minimum entrance requirements for this position are: (1) knowledge of modern police administrative methods, organization and procedure; (2) knowledge of police training and principles and methods; (3) ability to interpret departmental procedures, rules and regulations, and policies; and (4) ability to plan, assign, supervise and review varied police work.

19. The wage rate for the Major and Inspector positions is higher than the wage rate for Captains and Lieutenants.

20. On December 2, 2006, in an article in The Flint Journal, Defendant Williamson announced that he selected four black males and one white female to be on the Citizens Service Bureau. All of the candidates were selected from the Police Officer ranks.

21. The four African-American Officers selected for these positions were chosen because Defendant Williamson was attempting to deflect criticism from the African-American Police League concerning the lack of black officers in

command positions within the Police Department and Defendant Williamson was trying to curry favor from Flint's African-American community in the upcoming 2007 mayoral elections.

22. The Major and Inspector positions were never posted so that other members of the City of Flint Police Department could apply for these jobs. No testing procedure was used to fill these positions. In fact, none of the traditional procedures used to fill these positions were utilized.

23. If Plaintiffs would have known about the openings for these positions, Plaintiffs would have applied for these positions, as Plaintiffs were qualified for these positions.

24. On December 6, 2006, Defendant Williamson announced the individuals who were selected for the Citizen Service Bureau positions.

25. John Kehey, an African-American Male, was selected as Major of the Citizens Service Bureau. Plaintiffs were more qualified than Kehey for the Major position.

26. Connie Johnson, a white female, and David Dicks, Jermaine Reese, and Ralph Tedford, three African-American males, were selected for the Inspector positions on the Citizen Service Bureau. Plaintiffs were more qualified than all of these individuals for the Inspector positions.

27. Plaintiffs' race was a factor taken into account and applied to Plaintiffs' detriment in the selection process for the members of the Citizens Service Bureau in December 2006.

28. Plaintiffs have suffered mental anguish and economic loss as a result of the said hiring denials. Plaintiffs will also seek punitive damages against Defendant Williamson.

**COUNT I. ELLIOTT-LARSEN MCLA §37.2202 RACIAL DISCRIMINATION
CLAIM AGAINST DEFENDANTS WITH RESPECT TO THE DECEMBER 2006
HIRING DENIAL OF PLAINTIFFS TO THE MAJOR AND INSPECTOR
POSITIONS ON THE CITIZEN SERVICE BUREAU**

29. Plaintiffs hereby reallege and incorporate by reference the preceding paragraphs.

30. The said hiring denial to the Major and Inspector positions on the Citizens Service Bureau in December 2006 was an act of racial discrimination committed by Defendants against Plaintiffs.

31. Such racial discrimination is violative of the Michigan statute known as the Elliott-Larsen Civil Rights Act as stated in MCLA §37.2202.

32. Therefore, Plaintiffs hereby assert a MCLA §37.2202 racial discrimination claim against Defendants.

**COUNT II. 42 U.S.C. §1983 CLAIM AGAINST DEFENDANT WILLIAMSON
WITH RESPECT TO THE DECEMBER 2006 HIRING DENIAL OF
PLAINTIFFS TO THE MAJOR AND INSPECTOR POSITIONS
ON THE CITIZEN SERVICE BUREAU**

33. Plaintiffs hereby reallege and incorporate by reference the preceding paragraphs.

34. Defendant Williamson acted under color of law with respect to the said December 2006 hiring denial of Plaintiffs to the Major and Inspector positions on the Citizens Service Bureau.

35. Defendant Williamson denied Plaintiffs the said Major and Inspector positions on the Citizens Service Bureau, in substantial part, because of Plaintiffs' race.

36. Thus, Defendant Williamson violated Plaintiffs' rights under the equal protection clause of the United States Constitution.

37. Therefore, Plaintiffs assert a 42 USC §1983 racial discrimination claim against Defendant Williamson.

WHEREFORE, Plaintiff prays for Judgment against Defendants for damages as the Jury deems just, together with costs and interest. The said damages should include all damages allowed by law, including compensatory damages, punitive damages and attorney fees under 42 USC §1988.


RELIANCE UPON JURY DEMAND

Plaintiff hereby demands a jury under Rule 38 of the Federal Rules of Civil Procedure.

Dated: 10/24/07


GLEN N. LENHOFF (P32610)
Law Office of Glen N. Lenhoff
Attorney for Plaintiffs

Dated: 10/22/07


MICHAEL E. FREIFELD (P48198)
Law Office of Glen N. Lenhoff
Attorney for Plaintiffs

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The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

I. (a) PLAINTIFFS

DAVID PORTER, SCOTT SUTTER AND
BETHANY WHALEY

DEFENDANTS

MONA K. MAJZOUB

CITY OF FLINT AND DONALD WILLIAMSON,
individually

(b) COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF Genesee
(EXCEPT IN U.S. PLAINTIFF CASES)

COUNTY OF RESIDENCE OF FIRST LISTED DEFENDANT Genesee

(IN U.S. PLAINTIFF CASES) ONLY

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

(c) ATTORNEYS (FIRM NAME, ADDRESS, AND TELEPHONE NUMBER)

LAW OFFICE OF GLEN N. LENHOFF
328 South Saginaw Street, 8-North
Flint, MI 48502, (810)235-5660

ATTORNEYS (IF KNOWN)

07-14507

II. BASIS OF JURISDICTION

(PLACE AN "X" IN ONE BOX ONLY)

- ☐ 1 U.S. Government Plaintiff
☐ 2 U.S. Government Defendant
☒ 3 Federal Question (U.S. Government Not a Party)
☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES

(For Diversity Cases Only)

(PLACE AN "X" IN ONE BOX FOR PLAINTIFF AND ONE BOX FOR DEFENDANT)

- | | |
|--|--|
| <p>PTF DEF</p> <p>Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1</p> <p>Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2</p> <p>Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3</p> | <p>PTF DEF</p> <p>Incorporated or Principal Place of Business in This State <input type="checkbox"/> 4 <input type="checkbox"/> 4</p> <p>Incorporated and Principal Place of Business in Another State <input type="checkbox"/> 5 <input type="checkbox"/> 5</p> <p>Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6</p> |
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IV. NATURE OF SUIT

(PLACE AN "X" IN ONE BOX ONLY)

<p>CONTRACT</p> <p><input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 161 Medicare Act <input type="checkbox"/> 162 Recovery of Defaulted Student Loans (Excl. Veterans) <input type="checkbox"/> 163 Recovery of Overpayment of Veterans' Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 180 Other Contract <input type="checkbox"/> 185 Contract Product Liability</p>	<p>TORTS</p> <p>PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 318 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 348 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 358 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury</p> <p>PERSONAL INJURY <input type="checkbox"/> 362 Personal Injury — Med. Malpractice <input type="checkbox"/> 365 Personal Injury — Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability</p> <p>PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability</p>	<p>FORFEITURE/PENALTY</p> <p><input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 660 Airline Regs. <input type="checkbox"/> 680 Occupational Safety/Health <input type="checkbox"/> 690 Other</p> <p>LABOR</p> <p><input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Legislation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act</p>	<p>BANKRUPTCY</p> <p><input type="checkbox"/> 121 Appeal 28 USC 158 <input type="checkbox"/> 122 Withdrawal 28 USC 157</p> <p>PROPERTY RIGHTS</p> <p><input type="checkbox"/> 820 Copyright <input type="checkbox"/> 830 Patent <input type="checkbox"/> 840 Trademark</p> <p>SOCIAL SECURITY</p> <p><input type="checkbox"/> 861 HIA (1385H) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWD/DIWW (408(a)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (408(a))</p> <p>FEDERAL TAX SUITS</p> <p><input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS — Third Party 26 USC 7602</p>	<p>OTHER STATUTES</p> <p><input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 420 Banks and Banking <input type="checkbox"/> 430 Commerce/ICC Rates/etc. <input type="checkbox"/> 440 Deportation <input type="checkbox"/> 450 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 510 Selective Service <input type="checkbox"/> 550 Securities/Commodities/Exchange <input type="checkbox"/> 575 Customer Challenge 12 USC 3410 <input type="checkbox"/> 591 Agricultural Acts <input type="checkbox"/> 592 Economic Stabilization Act <input type="checkbox"/> 593 Environmental Matters <input type="checkbox"/> 594 Energy Allocation Act <input type="checkbox"/> 595 Freedom of Information Act <input type="checkbox"/> 600 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 650 Constitutionality of State Statutes <input type="checkbox"/> 690 Other Statutory Actions</p>
<p>REAL PROPERTY</p> <p><input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property</p>	<p>CIVIL RIGHTS</p> <p><input type="checkbox"/> 411 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 440 Other Civil Rights</p>	<p>PRISONER PETITIONS</p> <p><input type="checkbox"/> 510 Motions to Vacate Sentence HABEAS CORPUS: <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition</p>		

V. ORIGIN

(PLACE AN "X" IN ONE BOX ONLY)

- ☒ 1 Original Proceeding
☐ 2 Removed from State Court
☐ 3 Remanded from Appellate Court
☐ 4 Reinstated or Reopened
☐ 5 Transferred from another district (specify)
☐ 6 Multidistrict Litigation
☐ 7 Appeal to District Judge from Magistrate Judgment

VI. CAUSE OF ACTION

(CITE THE U.S. CIVIL STATUTE UNDER WHICH YOU ARE FILING AND WRITE BRIEF STATEMENT OF CAUSE. DO NOT CITE JURISDICTIONAL STATUTES UNLESS DIVERSITY.)

This is a 42 USC Section 1983 employment discrimination case.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23 ☐

DEMAND \$ 75,000+

CHECK YES only if demanded in complaint:

JURY DEMAND: ☒ YES ☐ NO

VIII. RELATED CASE(S) IF ANY

JUDGE

DOCKET NUMBER

DATE

10/23/07

SIGNATURE OF ATTORNEY OF RECORD

Glen N. Lenhoff

FOR OFFICE USE ONLY

RECEIPT # _____ AMOUNT _____ APPLYING IFP _____ JUDGE _____ MAG. JUDGE _____

PURSUANT TO LOCAL RULE 83.11

1. Is this a case that has been previously discontinued or dismissed?

☐ YES ☒ NO

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

2. Other than stated above, are there any pending or previously discontinued or dismissed companion cases in this or any other court, including state court? (Companion cases are matters in which it appears substantially similar evidence will be offered or the same or related parties are present and the cases arise out of the same transaction or occurrence.)

☐ YES ☒ NO

If yes, give the following information:

Court: _____

Case No.: _____

Judge: _____

NOTES: